STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Bell Telephone Company	**)**	
	)	
Petition Regarding Compliance with the Requirements of Section 13-505.1 of the Public Utilities Act	**)**	**Docket No. 04-0461**

REPLY BRIEF OF SBC ILLINOIS

Louise A. Sunderland
Illinois Bell Telephone Company
225 West Randolph Street, Floor 25D
Chicago, Illinois 60606
(312) 727-6705

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Illinois Bell Telephone Company ("SBC Illinois" or "the Company"), by its attorney, hereby submits its Reply Brief in the captioned proceeding in response to the Initial Briefs filed by the Staff of the Illinois Commerce Commission ("Staff"), the Citizens Utility Board ("CUB"), the Joint CLECs[1], and the United States Department of Defense and all other Federal Executive Agencies ("DOD/FEA").

I. INTRODUCTION

The parties are predictably arrayed along the same policy and legal lines reflected in their testimony. SBC Illinois and CUB contend that Section 13-505.1 does not require the imputation of UNEs to SBC Illinois' retail business rates at all; in the event that the Commission disagrees, they both argue that the retail service to which the UNEs are imputed should be defined broadly to include the entire array of products that are associated with providing local exchange service to business customers. Under this approach, SBC Illinois' retail business rates satisfy the requirements of Section 13-505.1. Staff and the Joint CLECs take a contrary view. They contend that UNEs must be imputed to SBC Illinois' competitive retail services and that the service to which they are imputed must be defined narrowly to include only the retail business

[1] The Joint CLECs are comprised of the following parties: Access One, Inc.; AT&T Communications of Illinois, Inc.; BullsEye Telecom; CIMCO Communications, Inc.; Data Net Systems, LLC; Forte Communications, Inc.; McLeodUSA Telecommunications Services, Inc.; MPower Communications Corp.; TCG Chicago; TCG Illinois; TruComm Corporation; and XO Illinois, Inc.

network access line on a stand-alone basis. Under their approach, further action is required to bring SBC Illinois' rates into compliance with Section 13-505.1.

Although Staff and the Joint CLECs are passionately committed to their view of how the imputation analysis should be performed, they do not take a firm position on what corrective action should be taken, urging instead that SBC Illinois simply be directed to come up with a "plan." It is rare in a Commission proceeding for parties to take very firm positions on methodological issues, but then to essentially be agnostic on the practical consequences. SBC Illinois does not object to this approach, however. SBC Illinois has made clear in testimony and its Initial Brief that, in the event that the Commission adopts the Staff/Joint CLEC view of imputation, the rate option that makes policy sense is to reprice its business network access line rates at a level that will satisfy Section 13-505.1. Since neither Staff nor the Joint CLECs have objected, SBC Illinois assumes that its compliance filing would be uncontroversial and would represent the termination of this proceeding.

II. HOW TO DEFINE THE "SERVICE" SUBJECT TO IMPUTATION IN THIS PROCEEDING

Staff and the Joint CLECs argue that the plain language of the statute, its legislative history and past Commission orders do not permit the Commission to view the "service" which is subject to imputation broadly to include the whole array of revenues that a carrier receives when it provides local exchange service to an end user. Rather, they insist that network access lines must be viewed as a stand-alone service under Section 13-505.1. Staff Init. Br. at 10-29; Joint CLEC Init. Br. at 3-12. They are incorrect. As all parties apparently concede, the term "service" is not defined in Section 13-505.1. This Commission has consistently used a case-by-case approach in past proceedings that has been very fact-specific and that has reflected the purpose of Section 13-505.1. Although Staff and the Joint CLECs imply that the Commission is

hamstrung by these prior decisions, that is simply not the case. This is an issue of first impression and the Commission has ample authority to interpret "service" in the manner suggested by SBC Illinois and CUB.

Staff contends that SBC Illinois' business network access lines must be considered a "service" on a stand-alone basis because Section 13-505.1 requires an imputation test for "*each* of [SBC Illinois'] own competitive services." Staff Init. Br. at 14 (emphasis in original). Staff is incorrect. The fact that the statute specifies that "*each* service" must pass imputation simply begs the question of what constitutes a "service" in the first place. If the "service" at issue here is defined as the business network access line *and* the other revenue-producing products which necessarily follow when a carrier provides dial tone to a customer – as SBC Illinois and CUB believe – then that combination constitutes "each service" contemplated by the statute.[2]

Staff argues that this approach is improper because Section 13-505.1 makes no mention of revenues that *CLECs* might obtain by offering network access lines to customers. Staff Init. Br. at 15. SBC Illinois is a loss to understand Staff's point. The imputation analyses submitted in this proceeding reflect the revenues that *SBC Illinois* derives from offering these products to customers, not the revenues that *CLECs* would derive. However, these analyses provide a reasonable proxy – in fact, a conservative proxy – for what CLECs would experience in the marketplace and, therefore, are certainly relevant to any price squeeze analysis. Moreover, these are not "potential revenues," as Staff claims. *Id.* SBC Illinois included in its studies the *actual revenues* it received from business customers in 2003, expressed as a per-line average. SBC Ill.

[2] SBC Illinois notes that it has performed broad imputation studies for "each" of the network access line products it offers (i.e., standard business lines in Access Areas A, B and C; ISDN BRI lines in Access Areas A, B and C; the package offerings for which Staff requested separate tests; and both types of COPTS lines in Access Areas A, B and C).

Ex. 1.0 (Panfil Direct) at 7-9. Nothing in Section 13-505.1 precludes the use of average actual data to determine the "aggregate revenues" from the service being studied.

Staff argues that usage and vertical features are separate competitive services, citing to Section 13-502.5 of the Act. Staff Init. Br. at 15-16. SBC Illinois agrees that usage has historically been subject to its own imputation tests, and the Company does not intend to change its practices in this regard. SBC Illinois' position in this proceeding is limited to network access lines, which are unique products. Imputation tests on *network access lines* should be performed on an aggregate basis because carriers do not compete for network access lines on a stand-alone basis and customers do not typically purchase or use them on a stand-alone basis. SBC Ill. Ex. 1.0 (Panfil Direct) at 16, 17-18.

Staff claims that the imputation test must assume that customers make no calls (local or local toll), subscribe to no features and make and receive no long distance calls that would result in switched access revenues to the carrier serving that customer. Staff Init. Br. at 16. Otherwise, Staff claims that imputation would be a "nullity," because revenues greatly exceed costs under SBC Illinois' approach. *Id.*; Staff Init. Br. at 41. Staff has it backwards. It is a *good thing* if there are substantial margins between the relevant revenues and costs in an imputation test. Any price squeeze analysis should be based on a realistic view of the marketplace. The fact that SBC Illinois' business network access lines easily pass imputation when a marketplace definition of "service" is used simply demonstrates that there is no competitive problem today. Imputation tests should *not* be reversed-engineered to produce the highest possible likelihood that a "service" will fail, as Staff seems to suggest. This approach would result in rate adjustments that are not actually needed to promote fair competition.

The legislative history of Section 13-505.1 does not advance Staff's position. Staff Init. Br. at 17-20. Contrary to Staff's contention, the fact that the Section 13-507 cross subsidy test is performed on all competitive services in aggregate is not inconsistent with using a broad definition of "service" in this proceeding. The imputation methodology proposed by SBC Illinois looks nothing like a Section 13-507 Aggregate Revenue Test. SBC Illinois included only those products in the imputation test that "come with" the network access line and, therefore, are logically considered part of local exchange service revenue package. SBC Illinois offers a host of other competitive services that were not considered in this analysis at all: Centrex; a wide range of dedicated, private line services (from analog voice grade channels through DS-1s and DS-3s up to high end products like GigaMan and Sonet); special access services provided to carriers; and operator services (e.g., calling card and collect calls). The fact that the General Assembly only contemplated "lumping together" *unrelated* services in the context of an Aggregate Revenue Test says nothing about "lumping together" *related* products in a network access line imputation analysis. Staff Init. Br. at 19-20.

Contrary to Staff's and the Joint CLECs' contentions, past Commission orders interpreting Section 13-505.1 do not dictate the outcome of this proceeding. Staff Init. Br. at 20-29; Joint CLEC Init. Br. at 8-12. Everyone agrees that this Commission has established a case-by-case approach to defining the "service" which is subject to imputation. SBC Ill. Init. Br. at 12; Staff Init. Br. at 21; Joint CLEC Init. Br. at 8-9; CUB Init. Br. at 5-6. Although it is true that the Commission has tended to adopt narrow service definitions in the past, these cases involved (for the most part) calling plans, not network access lines. Because calling plans may be directed at specific segments of the marketplace and are generally substitutable for one another, they can have different competitive characteristics; the Commission has recognized those different

characteristics in requiring plan-specific imputation tests. SBC Ill. Init. Br. at 11-13; SBC Ill. Ex. 1.1 (Panfil Rebuttal) at 16-17. Staff and the Joint CLECs have failed to demonstrate that network access lines fit that model. They have not even claimed, much less proven, that network access lines have different competitive characteristics than usage, features and switched access revenues from the perspective of either the carrier providing dial tone or the local exchange customer making the purchasing decision.

The only past SBC Illinois order cited by Staff dealing specifically with network access lines is the *Customers First Order*. *Order in Docket Nos. 94-0096, 94-0017, 94-0146, 94-0301 (Consol.),* adopted April 7, 1995 (*"Customers First Order"*). Staff Init. Br. at 22-23. Although Staff is correct that the Commission rejected SBC Illinois' argument that imputation requirements could not be applied to resold network access lines at all (because they were noncompetitive services), that issue has nothing to do with the instant proceeding. Retail business network access lines are competitive and SBC Illinois does not dispute that Section 13-505.1 is applicable. SBC Ill. Init. Br. at 5-6; SBC Ill. Ex. 1.1 (Panfil Rebuttal) at 7. The issue is how to define the "service" and the *Customers First Order* provides no guidance in this regard.

In fact, the history of the Commission's treatment of price squeeze issues in the wholesale context is actually *unhelpful* to Staff. It is true that, although the Commission did not apply imputation requirements *per se* in the *Customers First Order,* it did separately apply a "sum of the parts" test to maintain a relationship between UNE rates and wholesale/resale rates:

> "The Commission rejects the proposals of AT&T and MCI that we require Illinois Bell to satisfy an imputation test related to the pricing of unbundled NALs. We are adopting a number of pricing rules below, which effectively should preclude a price squeeze. The Commission agrees that Illinois Bell is not specifically *required* by *current* law or Commission regulation to satisfy an imputation test as a result of the tariff filings in this proceeding. However, we reject Illinois Bell's argument that Section 5/13-505.1 of the Act defines the exclusive uses for imputation analyses. We will return to this issue in our discussion of reciprocal compensation." *Id*. at 53 (emphasis in original).

Under that test, the sum of the unbundled portions of the network access line (i.e., the loop, port and monthly connection charges) could not exceed the total price of a bundled, resold network access line.[3] *Id*. at 60. In the Commission's Order in the Wholesale/Resale proceeding, the Commission essentially continued the "sum of the parts" test adopted in the *Customers First Order*, albeit under the auspices of Section 13-505.1. *Order in Docket Nos. 95-0458/95-0531*, adopted June 26, 1996, at 26.[4] However, in the subsequent TELRIC proceeding which implemented the 1996 Act, the Commission reversed course and decided that a "sum of the parts" test would *not* be required for wholesale services:

> "We find, as we did in Issue A, Relationship Between Wholesale and UNE Rates, that the two pricing standards [i.e., TELRIC and wholesale/resale] are distinctly different under the Act. The whole purpose of this long and arduous proceeding is to determine according to the Act the appropriate cost-based rates for various UNEs. To impose a sum-of-the-parts test could skew UNE prices away from what we have determined on this record as the appropriate cost basis (which includes the same percentage allocation of shared and common costs across all UNEs), and we do not impose such a test." *Order in Docket No. 96-0486/96-0569*, adopted February 17, 1998, at 80.

Thus, the most that can be said based on this line of cases is that the Commission has rejected imputation-like pricing requirements for network access lines in the wholesale environment, and has never addressed the issue of how to perform an imputation test for retail network access lines.

Contrary to Staff's arguments, the Commission is not obligated by these prior decisions to decide that network access lines are a "service" on a stand-alone basis or to generally adopt a narrow approach to defining a "service." Staff Init. Br. at 27-28. Unlike the factual situations in

[3] *I.e.*, the comparison in that proceeding was between unbundled UNEs and bundled *wholesale* network access lines that were available for resale, not between unbundled UNEs and bundled *retail* network access lines.

[4] The debate there, however, primarily involved whether switched access rates paid by IXCs to complete local toll calls should be imputed to reciprocal compensation rates paid by facilities-based CLECs to complete similar calls. *Id*. at 24-26. This has nothing to do with how to define "service" relative to retail network access lines.

Holland v. Quinn 67 Ill. App. 3d 571 (1st Dist. 1978) and *People ex. rel. Burkitt v. City of Chicago*, 202 Ill. 2d 36 (2002), the Commission has not adopted a policy or regulation that determines *a priori* how to define a "service" for purposes of Section 13-505.1. The Commission has addressed this issue only in the context of disputes over very specific products (generally usage), the Commission has made the determination only on a case-by-case basis and the specific rulings were based on the totality of the facts and circumstances of each case. At most, one could argue that the General Assembly has acquiesced in use of a case-by-case approach.

Finally, Staff contends that the FCC's broad-based approach to price squeeze analysis is irrelevant, because the ". . . price squeeze analysis provided by Staff is reflective of the unique price and cost structure of SBC in Illinois." Staff Init. Br. at 44. Staff is suffering from myopia. The FCC's price squeeze analyses were not based on any state-specific price or cost structures. The standards developed by the FCC represent broadly held views of how to determine whether wholesale (i.e., UNE) rates are so high as to preclude retail competition. The point made by the FCC is that no meaningful conclusion can be reached about price squeezes unless a broad view is taken of the revenue opportunities available to competitors in the marketplace and the various alternative wholesale products (i.e., UNEs *and* resale) that they can use to provide service. SBC Ill. Init. Br. at 8-9. If Staff is saying that the Commission should require rate changes *whether or not* there really is a price squeeze in any meaningful sense, so be it. But the FCC's approach cannot and should not be written off simply because it was not Illinois-specific.[5]

[5] Staff contends that SBC Illinois misunderstood its position on how to determine which services/rate elements must be subject to an imputation test. Staff Init. Br. at 43-44. Staff states that separate tests are required only when the service can be purchased on a stand-alone basis and only for those rate elements within the service that can also be purchased on a stand-alone basis. *Id*. at 44. SBC Illinois apologizes for any confusion. However, Mr. Koch's testimony did *not* make this distinction: "Staff strongly believes that the statute requires an imputation test for every competitively tariffed service that can function on a stand-alone basis, *and for every unique rate offered for that service in the tariff*." Staff Ex. 1.0 (Koch Direct) at 15-16 (emphasis added).

III. WHETHER UNES ARE "SERVICES" OR "SERVICE ELEMENTS" FOR PURPOSES OF THE IMPUTATION REQUIREMENT

Staff and the Joint CLECs continue to argue that UNEs are "services" or "service elements" under Section 13-505.1. Staff Init. Br. at 29-36; Joint CLEC Init. Br. at 12-16. Their positions resolutely ignore what is now settled law at both the FCC and in this state: UNEs are *not* services and, logically, cannot be service elements either.

Staff contends that it is dispositive of the issue that SBC Illinois' UNEs are currently *tariffed* and that they are currently classified as *noncompetitive services*. Staff Init. Br. at 32. Staff could not be more wrong. Regardless how SBC Illinois currently offers UNEs to carriers, they are not *services* under Illinois law and they should be provided under interconnection agreements, not tariffs. *Globalcom, Inc. v. Illinois Commerce Commission*, 347 Ill. App. 3d 592, 607-08 (1st Dist. 2004); *Wisconsin Bell, Inc. v. Bie*, 340 F.3d 441, 442-45 (7th Cir. 2003). See SBC Ill. Init. Br. at 16-17. The mere fact that UNEs are currently in SBC Illinois' tariffs does not and cannot change what they *are* as a matter of law. Whether a product is a "telecommunications service" determines whether the carrier has a tariffing obligation, not vice versa. To use an extreme example, even if SBC Illinois were to tariff the provision of toasters to end users (and the Commission allowed the tariff to go into effect), toasters would not thereby become a "telecommunications service" under the Act. The remedy is to remove toasters from the tariffs, not to treat them as a "service."

Illinois Central Gulf R.R. Co. v. Sankey Brothers, 67 Ill. App. 3d 435 (2d Dist. 1978), aff'd 78 Ill. 2d 56 (1979) has nothing to do with the issues in this case. Staff Init. Br. at 32. *Sankey Brothers* stands for the proposition that carriers must charge the rates contained in a filed tariff, regardless what price may have been quoted to the customer (i.e., the "filed rate doctrine"). No one is suggesting here that SBC Illinois is not complying with its tariffs. *Sankey Brothers*

provides no guidance in the unique circumstances of this case, where Staff is attempting to use the mere fact of tariffing as a tool of statutory interpretation – *in conflict* with other applicable law.

Staff contends that the fact that the FCC has held that UNEs are not "services" is irrelevant, because this Commission is not obligated to follow federal law or FCC decisions. Staff Init. Br. at 33. *First*, the FCC's view is identical to state law on this issue. As SBC Illinois explained in its Initial Brief, Section 13-216 defines UNEs as "a facility or equipment," not a "service"; the Appellate Court in *Globalcom* ruled that UNEs are not services, relying in part on the definition of "network elements" in Section 13-216; and this Commission found that UNEs are not services in the *Project Pronto* proceeding. SBC Ill. Init. Br. at 16-17. *Second*, the FCC and the 1996 Act *created* UNEs. Although the FCC provided for state authority over tariffing and rate issues, its views are not merely an opinion on unrelated federal issues. *Third*, the very cases cited by Staff support Commission reference to and reliance on the FCC's views. In *Sankey Brothers*, both the Appellate Court and the Supreme Court relied on federal interpretations of the "filed rate doctrine" in reaching their conclusion on the same issue under state law:

> "While federal case law does not control our resolution of this question, which deals only with intrastate commerce, we nevertheless find it persuasive, given the similar statutory mandate imposed by federal law on carriers." *Sankey Brothers*, 78 Ill. 2d at 59, citations omitted; see also 67 Ill. App. 3d at 438.

The same principle applies here.

The Joint CLECs argue that UNEs must be "services" because Section 13-203 of the PUA defines telecommunications services to include "access and interconnection arrangements and services." Joint CLEC Init. Br. at 12. They are incorrect. This issue has already decided in *Globalcom*, *supra*. The Commission may not reverse an Appellate Court decision. Moreover, in

2001, the General Assembly adopted a definition of "network elements" in which they are specifically described as a "facility or equipment" – not as a telecommunications service. Notably, the General Assembly did not change Section 13-203 at that time to include "network elements" in the definition of a telecommunications service, along with "access" and "interconnection arrangements." One section of a statute should not be interpreted in a manner that conflicts with another section of the same statute. *Mann v. Board of Ed. of Non-High School Dist. No. 216*, 406 Ill. 224, 230 (1950); *Schneider v. Board of Appeals of City of Ottawa*, 402 Ill. 536, 545 (1949). Therefore, network elements cannot be considered "services" under Section 13-203.

Even if the Commission were to consider the language in Section 13-203, it can be read in harmony with Section 13-216 without classifying UNEs as services. There are a number of "access and interconnection arrangements and services" which are *not* UNEs, for example, switched and special carrier access services. SBC Illinois considers both switched and special access to be "services," they are offered as "services" in SBC Illinois' tariffs, and they provide a means by which IXCs and other carriers "interconnect" with and obtain "access" to SBC Illinois' network.[6] Notably, the Commission adopted rules governing access and interconnection arrangements for switched and special access transport services as long ago as 1994 in Docket No. 92-0398, which were codified in Part 790 of the Commission's rules. 83 Ill. Adm. Code Section 790.400-790.445. Therefore, the words the Joint CLECs rely on in Section 13-203 have meaning independent of UNEs and do not imply that UNEs are "services."

[6] SBC Illinois notes that both Section 251 of the federal Act and Section 13-801 of the PUA establish an obligation to provide "nondiscriminatory access *to* network elements." However, network elements are not themselves defined as a form of "access."

In the event that UNEs are not "services" – and they clearly are not – Staff argues that they must at least be "service elements." Staff Init. Br. at 33-36. Admitting that the PUA "offers little guidance as to the meaning of the term," Staff suggests that the Commission resort to the "ordinary and popularly understood meaning" of the term. *Id.* at 33. This is not a helpful approach. There is no ordinary and popularly understood meaning of the term "service element." Based on a dictionary definition of "element," Staff argues that a service element is a "constituent" or "distinct part" of a telecommunications service and that UNE loops and ports are such "constituent" or "distinct" parts of a network access line. *Id.* at 33-34. SBC Illinois agrees that loops and ports are *elements* that can be used by CLECs to create a network access line. However, Staff is glossing over the key definitional problem – are UNE loops and ports "*service*" elements? They are not. They are "*network*" elements. In short, "service element" is a term of art that is unique to the telecommunications industry and to Section 13-505.1 and the dictionary cannot be used to define it.

It is an even more fundamental principle of statutory construction that the words of a statute should be given the meaning intended by the lawmakers. *People v. Latona*, 184 Ill. 2d 260, 269 (1998); *Matter of Disconnection of Certain Territory From Sanitary Dist. Of Rockford*, 111 Ill. App. 3d 339 (2d Dist. 1982). And, when different language is used in different parts of a statute (here "network elements" vs. "service elements"), it should be assumed that different results were intended. *In re K.C.*, 158 Ill. 2d 542, 550 (1999). In this case, the General Assembly could not possibly have intended to include UNEs in the term "service element" when Section 13-505.1 was enacted in 1992. UNEs did *not exist* until the mid-1990s. Thus, the only reasonable interpretation of the term "service element" is that it is equivalent to a rate element within a service – since rate elements *did* exist in 1992. The correctness of this interpretation is

underscored by the subsequent, and different, definition of "network elements" adopted by the General Assembly in 2001, when UNEs were an understood part of the telecommunications landscape.

Staff and the Joint CLECs contend that SBC Illinois is somehow foreclosed from arguing that UNEs are neither "services" nor "service elements," based on prior statements or studies submitted in other proceedings. Staff Init. Br. at 34; Joint CLEC Init. Br. at 13-16. They are incorrect. *First*, SBC Illinois is just a party, like any other party. It is the *Commission's* obligation to rule on this definition and it is not bound by prior positions taken by parties. *Second*, SBC Illinois does not dispute the fact that it has performed imputation analyses using UNEs in the past. However, in these past proceedings, SBC Illinois' retail rates passed imputation regardless how the tests were performed, and there was no reason to take a hard look at the issue. SBC Ill. Ex. 1.1 (Panfil Rebuttal) at 4-5. *Third*, the legal landscape has changed since those earlier dockets. It is now settled that UNEs are not services, both as a matter of federal and state law. Therefore, it was incumbent on SBC Illinois and, now, is incumbent on the Commission to evaluate this question based on *current* circumstances.

Finally, Staff contends that the Commission has already ruled that "unbundled loops" are noncompetitive services or noncompetitive service elements in the *GTE North Order* involving CentraNet. *Order in Docket Nos. 93-0301, 94-0041 (Consol.)*, 1994 Ill. PUC Lexis 436, adopted October 11, 1994. Staff Init. Br. at 35-36. Staff has seriously mischaracterized that Order. It is *impossible* for the Commission to have addressed any form of unbundled loop in the *GTE North* proceeding. That Order was adopted in 1994, based on a record developed in 1993 and 1994. GTE North most certainly did not offer unbundled loops at that time. No incumbent local exchange carrier in Illinois provided unbundled loops prior to the completion of the *Customers*

First proceeding in 1995, including SBC Illinois. At that time, the Commission adopted line-side unbundling rules in Docket No. 94-0049 (a companion docket to the *Customers First* proceeding) that applied to the whole industry. However, carriers like GTE North were only obligated to file unbundled loop tariffs 180 days after the receipt of a bona fide request from a CLEC. *Order in Docket No. 94-0049*, adopted October 5, 1995 (then 83 Ill. Adm. Code Section 790.320). SBC Illinois does not know when GTE North first filed an unbundled loop tariff, but it would certainly have post-dated the CentraNet Order by *years*.[7]

In short, none of the statutory arguments made by Staff or the Joint CLECs are valid. UNEs are not "services" or "service elements" and they do not need to be imputed to retail services under Section 13-505.1. SBC Illinois wishes to emphasize once again, however, that such a finding will not lead ". . . to an anticompetitive price squeeze that could completely undermine local competition." Joint CLEC Init. Br. at 14-15. Under any reasonable price squeeze analysis, the UNE loop rate increases approved by the Commission in Docket No. 02-0864 were modest and did not significantly impact the CLECs' overall ability to compete. The only business customers that the CLECs would have difficulty serving today using UNEs are those who buy no features and make no use of the network. SBC Ill. Ex. 1.1 (Panfil Rebuttal) at 10-11. These customers are not and have never been the focus of the CLECs' marketing efforts; and, to the extent CLECs want to serve them, resale is a viable and economic alternative. *Id*. at 11-12. Staff and the Joint CLECs consistently ignore these considerations.

[7] It appears from the text of the *Order* that CentraNet was a Centrex-like service. SBC Illinois agrees that Centrex is a stand-alone service (unlike business network access lines) and that both loops and switching facilities are used to provide it. Beyond that, it is not clear what the *GTE North* case stands for. Although AT&T and MCI apparently claimed that they were using loops and "access switching" facilities to provide their competitive services, those services were apparently *not* Centrex or a Centrex-like service. Nor is it clear what rates GTE North was being required to impute to CentraNet. It would necessarily have been their *retail rates* for business network access lines (since GTE would not have had unbundled loop rates in 1994) and, perhaps, switched carrier access charges, based on the language of the Order. These would have been "services" under GTE North's 1994 tariffs; indeed, they are "services" under SBC Illinois' tariffs as well.

IV. ISSUES RELATED TO SPECIFIC TESTS

A. ISSUES COMMON TO THE PARTIES' PROPOSED IMPUTATION TESTS

1. Inclusion Of Nonrecurring Charges ("NRCs")

Staff contends that NRCs should not be included in imputation tests because the rate for business network access lines is not designed to recover the upfront cost of establishing the line connection. Staff Init. Br. at 36-37. This argument is improper. Staff never raised this issue in testimony. Although Staff cites to page 16 of its Direct Testimony to support its position, nothing on page 16 addresses NRCs. *Id.* at 36. Staff also cites to testimony filed in Docket No. 98-0860 (Patrick Phipps) and Docket No. 02-0864 (Koch). *Id.* at 37. This testimony was not admitted as exhibits in this proceeding, and Staff has not requested administrative notice. Moreover, the Commission's rules discourage requests for administrative notice of testimony from other proceedings. 83 Ill. Adm. Code Section 200.640(b). In any event, SBC Illinois disagrees with Staff's position, because carriers can and do adopt different approaches to recovering nonrecurring costs in the marketplace; they should be viewed as part of the total costs of the service which must be recovered in the combination of recurring and nonrecurring charges. SBC Ill. Ex. 1.0 (Panfil Direct) at 9-10.

2. Use Of LRSIC Or TELRIC Costs For The Port

Staff and the Joint CLECs continue to argue that TELRIC, not LRSIC, costs should be used for the port. Staff Init. Br. at 38-39; Joint CLEC Init. Br. at 17-19. Staff takes a highly mechanistic approach: according to Staff, if the rate is found in a noncompetitive tariff, it must be imputed. As explained previously, the UNE port should not be in SBC Illinois' tariffs in the first place. Moreover, the Commission has consistently looked at the extent to which competitors rely on a particular input, a fact which Staff ignores. For example, in the original

Alternative Regulation Plan proceeding the Commission ruled that SBC Illinois need only impute those network services used by competitors and only *to the extent that* they are used by competitors. *Id*. at 79-80. SBC Illinois has used LRSIC, rather than wholesale products, in imputation tests whenever the competitor does not have to use SBC Illinois' offerings (even if some competitors choose to). SBC Ill. Ex. 1.0 (Panfil Direct) at 11.

Moreover, policymakers at the federal level have recognized that switch ports are *not* an essential element for CLEC competition. The fact that many CLECs use UNE ports as part of the UNE-P does not establish that they must obtain switching capabilities from SBC Illinois and, in fact, many do not. So-called "enterprise" switching has already been "de-listed" by the FCC as a UNE in its *Triennial Review Order*. Pursuant to the D.C. Circuit Court of Appeals' opinion in the *Triennial Review Order* appeal, the FCC is reportedly in the process of phasing out mass market switching as well. *United States Telephone Ass'n v. FCC*, 359 F. 3d 553 (D.C. Cir. 2004). In today's environment, Staff's position is too simplistic and should not be adopted.

B. ISSUES SPECIFIC TO SBC ILLINOIS' PROPOSED "BROAD" IMPUTATION TEST

1. Accuracy Of Data Used To Develop Usage, Feature And Switched Access Revenues

The Joint CLECs continue to complain about the accuracy of the data used by SBC Illinois in its broad imputation analyses. Joint CLEC Init. Br. at 20. SBC Illinois has already explained that this data is reliable, as it is derived from systems used to develop revenue and demand information for many years for this Commission and SBC Illinois relies on it to operate its own business. SBC Ill. Ex. 1.1 (Panfil Rebuttal) at 20-21. It is not necessary for the CLECs to be able to personally audit every system in order for SBC Illinois to use this information. Notably, Staff found these data sources to be perfectly acceptable. Staff Init. Br. at 39.

2. Use Of Averages To Develop Usage, Feature And Switched Access Revenues

The Joint CLECs continue to take issue with SBC Illinois' use of average usage, feature and switched access revenues in its imputation analyses. Joint CLEC Init. Br. at 21-23. For example, the Joint CLECs claim that SBC Illinois' calculations are inappropriate because they "*assume* that the average rate [customers] pay is the regular tariffed rate," while, in fact, a "high percentage of customers [receive] discounted promotional rate." *Id.* at 21 (emphasis added). The Joint CLECs misinterpret their own witness's testimony. SBC Illinois' studies do not "assume" anything; they are based on the total, *actual* business revenues booked by the Company for 2003, divided by business network access lines in service. SBC Ill. Ex. 1.0 (Panfil Direct) at 8; SBC Ill. Ex. 1.1 (Panfil Rebuttal) at 20-22. Thus, they reflect the actual impact of all discount plans that SBC Illinois offers to business customers. Furthermore, there is no evidence that a "high percentage" of customers are on discount plans. In fact, Mr. Webber simply expressed surprise that so many of SBC Illinois' business customers still pay standard tariffed rates.

Similarly, Staff expresses concern that the usage revenue in SBC Illinois' studies "did not contain discounts." Staff Init. Br. at 39-40. Staff has also misunderstood the Joint CLECs' point. As just explained, the average usage revenues used in SBC Illinois' studies *did* reflect all discounts which business customers enjoyed in 2003. Therefore, no additional analysis of SBC Illinois' data is required in the event that the Commission adopts SBC Illinois' approach.

V. RATE DESIGN ISSUES FOR BUSINESS SERVICES GENERALLY

A. RATE OPTIONS IF SECTION 13-505.1 IS DEEMED NOT SATISFIED

There are only a limited number of viable rate options to achieve compliance with Section 13-505.1 in the event that the Commission rules that UNEs must be imputed to retail

business network access lines on a stand-alone basis. As SBC Illinois explained in testimony and its Initial Brief, the Company would propose to increase its business network access line rates to the point where Section 13-505.1 is satisfied. These rate increases would not be large in absolute terms and would reasonable in the marketplace. These increases would also have the effect of restoring some of the CLECs' profit margins lost when the increased loop rates became effective.[8]

The Joint CLECs continue to argue that reducing UNE rates is a viable alternative. Joint CLEC Init. Br. at 26-31. However, there is no basis on which the Commission could order lower rates, and SBC Illinois has made clear that it will not do so voluntarily. SBC Ill. Ex. 1.1 (Panfil Rebuttal) at 28; SBC Ill. Init. Br. at 26. Even the CLECs acknowledge that such a reduction could not be ordered by the Commission. Joint CLEC Init. Br. at 29-30. Staff agrees that UNE rate reductions would be inconsistent with Docket No. 02-0864 and would not be appropriate. Staff Init. Br. at 47. Therefore this option does not warrant further consideration.[9]

The Joint CLECs then argue that SBC Illinois could issue them monthly credits for the difference between imputation-compliant business network access line rates and its existing retail rates. Joint CLEC Init. Br. at 31-32. This option is not viable either. Whether the CLECs are provided rate reductions through the front door by means of lowered UNE rates or through the back door through credits, the net financial, policy and legal effect would be exactly the same. SBC Ill. Ex. 1.1 (Panfil Rebuttal) at 30. The Commission Staff also opposes this approach on legal and policy grounds. Staff Init. Br. at 47-48. Since SBC Illinois would not

[8] Although SBC Illinois' UNE tariffs were revised effective June 25, 2004, the process of amending interconnection agreement has taken much longer. *UNE Order* at 293.

[9] The Joint CLECs contend that SBC Illinois did not contest Mr. Webber's point that the TELRIC rates approved by the Commission in Docket No. 02-0864 are only the *maximum* rates SBC Illinois can charge. Joint CLEC Init. Br. at 80. They are incorrect. Mr. Panfil did respond, pointing out that the rates approved by the Commission are *the* TELRIC compliant rates, not the *maximum* that can be charged. SBC Ill. Ex. 1.1 (Panfil Rebuttal) at 28.

adopt a credit program voluntarily and since none of the parties have provided a theory on which it could be ordered by the Commission, this option should be disregarded.

Staff suggests again that SBC Illinois could redesign its business retail rate structure, so that business network access lines are offered only as part of packages that include usage and features. Staff Init. Br. at 46. This would be a draconian solution to a relatively small rate level problem and SBC Illinois is at a loss to understand why Staff is enamored of it. The "new" business local exchange product would have to be priced high enough to cover not only the imputation shortfall on the network access line, *but also* the costs of features and usage included in the package. Customers who make little or no use of the network – the customers Staff is ostensibly "protecting," although it is not clear from *what* – would most likely have to pay more under this approach than they would under a straight reprice designed solely to solve the imputation problem. In any event, SBC Illinois does not believe that imputation requirements should drive rate structure. SBC Illinois believes that there is still a role in the marketplace for *à la carte* rates and would withdraw them only if it appeared appropriate from a marketing perspective. SBC Ill. Ex. 1.1 (Panfil Rebuttal) at 31. DOD/FEA indicate that they, as business customers, would not want to be limited to package rates for local exchange service. DOD/FEA Init. Br. at 4. Therefore, this option is not realistic either. [10]

[10] The Joint CLECs persist in their ridiculous suggestion that SBC Illinois could withdraw business services in any areas where the network access line rate does not satisfy Section 13-505.1. Joint CLEC Init. Br. at 32-34. SBC Illinois cannot believe that this Commission would seriously consider the withdrawal of service from hundreds of thousands of customers to be a productive suggestion. SBC Ill. Ex. 1.1 (Panfil Rebuttal) at 31-32. The Joint CLECs point out that at least some of the 1.7 million business lines which SBC Illinois serves today in Illinois would pass on imputation test and could continue to be served. Joint CLEC Init. Br. at 33. However, based on the tests performed by SBC Illinois, Staff and the Joint CLECs, there is no dispute that business exchange service would have to be withdrawn from *all* of Access Areas B and C. SBC Ill. Ex. 1.0 (Panfil Direct) Sch. ELP-DL (Prop.); Staff Ex. 1.0 (Koch Direct) Sch. 1.03 (Prop.); Joint CLEC Ex. 1.0 (Webber Direct) at 40. This would represent the vast majority of the 1.7 million lines in service.

In short, increases in the business network access line rates is the only viable remedy if the Commission decides that UNEs must be imputed to network access lines on a stand-alone basis. Given the limited options, SBC Illinois agrees with Staff and the Joint CLECs that the Commission should simply direct the Company to correct the problem – assuming, of course, that the implementation issues discussed below have been resolved.

B. IMPLEMENTATION ISSUES: THE UNDER 4-LINE RATE CAP IN SECTION 13-502.5

Implementing across-the-board increases in business network access line rates in SBC Illinois' serving territory is complicated by Section 13-502.5 of the Act, which places a rate cap on retail services subscribed to by small (1-4 line) business customers until July 1, 2005. As SBC Illinois explained, substantial internal work would be necessary to make the systems changes required to implement rate increases for business customers with 5 or more lines, but not those with 1-4 lines. This work would be expensive and could not be completed in the four month period between late February, 2005, when an order is due in this proceeding, and July 1, 2005, when the rate cap expires. Therefore, SBC Illinois recommended that, if the Commission concludes that the rate cap must be observed, any rate changes required by this proceeding be delayed until July 1, 2005. SBC Ill. Ex. 1.0 (Panfil Direct) at 30-32; SBC Ill. Init. Br. at 30-31.

Staff and the Joint CLECs take a remarkably unhelpful, "not my problem" approach to the issue. On the one hand, they recognize that Section 13-502.5 may bar rate increases for 1-4 line customers until July 1, 2005. On the other hand, they reject SBC Illinois's proposal to defer rate changes to July 1. Staff Init. Br. at 50-51; Joint CLEC Init. Br. at 36-37. This advocacy is not productive. The implementation issues faced by SBC Illinois are real. No party challenged SBC Illinois on the facts. Simply insisting that "the problem is SBC's to solve" does not advance the policy ball in any meaningful way. Staff Init. Br. at 52.

Staff implies that SBC Illinois was derelict in not implementing a systems solution sooner that would allow it to bill separate rates to business customers with 1-4 lines. *Id*. at 51-52. However, nothing in Section 13-502.5 *required* SBC Illinois to make any such changes. SBC Illinois' decision to live with the rate cap for broad-based services like network access lines for four years, rather than spending substantial resources to differentiate billing between these customer groups, was a legitimate and rational business decision. It would make no sense to impose such an obligation on SBC Illinois *now*, with only months left to run on the 1-4 line rate cap, even if the work could be done in the time available. And it *cannot*. Moreover, even if SBC Illinois could bill higher rates to business customers with 5 or more lines, this would not solve the problem. What action would be taken for the 1-4 line customers?

Staff and the Joint CLECs contend that SBC Illinois could simply implement one of the "other" rate alternatives. Staff Init. Br. at 51; Joint CLEC Init. Br. at 36-37. As discussed previously, most of these "options" are not options at all. Staff again suggests that SBC Illinois could simply withdraw network access lines as a stand-alone product and require all business customers to take a package of services. *Id*. This is a case of the statutory "tail" wagging the rate structure "dog". Not only would SBC Illinois' customers be worse off because they would have fewer choices, but they would be deprived of those choices permanently to solve a *four month problem*.[11]

This issue needs to be resolved now if SBC Illinois is going to be directed to make rate changes. The Company has presented a proposal that would harmonize Section 13-502.5 and 13-505.1 – i.e., delaying all rate increases until July 1, 2005. The Commission certainly has the

[11] If SBC Illinois chose to adopt Staff's proposal, make all of the necessary billing changes, communicate those changes to its customer base and handle the thousands of inquiries it would receive, it is highly unlikely that the Company would reverse these changes once the July 1 date had come and gone.

authority to adopt a reasonable implementation period in any proceeding: a four-month implementation period would fall well within a "reasonableness" standard in this proceeding, given the conflict between the two statutory sections and the public interest in treating all business customers in an even-handed manner.

Notably, neither Staff nor the Joint CLECs take a position on the core legal issue: i.e. whether the rate cap in Section 13-502.5 supersedes the imputation obligations in Section 13-505.1. Staff suggests that it "*might* be argued that the statutory imputation requirement conflicts with Section 13-502.5." Staff Init. Br. at 51 (emphasis added). Similarly, the Joint CLECs suggest that "SBC *may* be precluded by Section 13-502.5(b)" from raising rates for 1-4 line customers. Joint CLEC Init. Br. at 36 (emphasis added).

However, it is less than clear that Section 13-502.5 would trump Section 13-505.1.[12] The rules of statutory interpretation are not particularly helpful in this situation, where there is a direct conflict between two statutory provisions. The first objective would be to construe these sections so that they can both stand. *Schneider* v. *Board of Appeals of City of Ottawa, supra,* at 545. This is obviously difficult to accomplish, other than to impose a lag period on implementing Section 13-505.1 as SBC Illinois has suggested. Another rule of construction is that specific provisions control general provisions on the same subject. *People* v. *Latona, supra,* at 269-70. However, *both* Sections 13-502.5 and 13-505.1 are specific provisions. Since these principles do not resolve the conflict, then the Commission should effect the underlying intention of the General Assembly. *Stone v. Department of Employment Security Board of Review*, 151 Ill. 2d 257, 266-67 (1992). Section 13-502.5 was enacted in 2001 to address a specific issue: because Section 13-502.5 declared all of SBC Illinois' business services competitive as a matter

[12] SBC Illinois expected Staff to discuss this legal issue in more detail in its Initial Brief. However, Staff (and the Joint CLECs) essentially assumed that Section 13-502.5 would control, without any real analysis.

of law – with the additional rate freedoms that attend such a classification – the legislature wanted to protect small business (1-4 line) customers from carrier-initiated rate increases for a transitional four-year period. Nothing in Section 13-502.5 suggests that the General Assembly meant to prohibit rate increases dictated by *other statutory requirements.* Therefore, the Commission could reasonably conclude that the imputation requirements of Section 13-505.1 supercede the rate cap in Section 13-502.5. This would also solve any implementation problems.

Finally, the Joint CLECs suggest that SBC Illinois be required to file an "implementation plan" within 21 days of the Order in this proceeding, with rate changes to be implemented within 35 days. Joint CLEC Init. Br. at 36. SBC Illinois agrees that a reasonable implementation period will be required and does not object to 35 days (assuming, of course, that the rate cap issue is satisfactorily resolved). However, the Company sees no need for filing an "implementation plan". That is what *this* docket was intended to accomplish. The Joint CLECs' decision to leave the implementation decision to SBC Illinois was within their prerogative as parties. However, that does not warrant giving themselves a second "bite" at the implementation "apple," once SBC Illinois has made its decision. Instead, SBC Illinois should be directed to file compliance tariffs with the Commission in the usual manner, providing only for Staff review of the filing to ensure compliance with the Commission's Order.

VI. PAYPHONE ISSUES

A. INTERRELATIONSHIP WITH DOCKET NO. 98-0195

Not surprisingly, the IPTA is outraged at the suggestion that the Commission's Order in Docket No. 98-0195 has not produced legally valid rates and opposes any further consideration of those rates. IPTA Init. Br. at 5-13. The IPTA's arguments fundamentally misconstrue SBC Illinois' position in this case, as described more fully below.

The IPTA argues that SBC Illinois is attempting to circumvent the PUA's procedures for reviewing Commission orders. IPTA Init. Br. at 8-9. The IPTA is ignoring the fact that SBC Illinois did not initiate this proceeding on its own initiative – it was ordered by the *Commission* in Docket No. 02-0864. Moreover, the Commission specifically directed the parties to address whether SBC Illinois' retail business rates are in compliance with the imputation requirements of Section 13-505.1 and, if not, to correct the situation. As a legal matter, the Commission must be able to find that either these payphone rates comply with Section 13-505.1 or that Section 13-505.1 does not apply to them (because of preemption or otherwise).[13] The Commission does not have the option of simply ignoring the issue, just because Docket No. 98-0195 took a long time to complete or because the parties are tired of litigating. In other words, the IPTA should be directing its ire at Section 13-505.1 of the Act – not SBC Illinois.

The IPTA argues that SBC Illinois is simply trying to relitigate issues which it lost in Docket No. 98-0195. IPTA Init. Br. at 7, 10-13. The IPTA is incorrect. SBC Illinois is *not* re-arguing the merits of the FCC's payphone decisions (although it does believe they were wrongly decided). SBC Illinois is *not* contending that its payphone rates should be set at the level of retail business rates. SBC Illinois is *not* contending that there should be no cap on the overheads applied to direct payphone costs in setting payphone rates. In fact, the Company is just as disinclined to revisit the overhead issue as the IPTA. SBC Ill. Ex. 1.1 (Panfil Rebuttal) at 36-37. Instead, SBC Illinois is proposing that the Commission revisit the *direct cost* basis for the payphone rates approved in Docket No. 98-0195: i.e. the use of LRSIC vs. TELRIC.

No one could argue – and IPTA does not contend – that TELRIC costs cannot be used in the place of LRSIC costs under the FCC's approved payphone methodologies. SBC Ill. Ex. 1.1

[13] Of course, if the Commission concludes that UNEs need not be imputed at all in Section 13-505.1 analyses, then the payphone rate issue vanishes as well.

(Panfil Rebuttal) at 36-37; SBC Ill. Init. Br. at 34-36. Instead, the IPTA contends only that the Commission was aware that a differential existed between TELRIC and LRSIC costs when it decided to use LRSIC costs in Docket No. 98-0195. IPTA Init. Br. at 12. The IPTA ignores the fact that this differential was small when the payphone rates were adopted in November of 2003 and that it increased dramatically when higher UNE loop rates were approved in June of 2004. These UNE rate changes constitute a material change in fact that the Commission could not have foreseen earlier and which now warrants a new look at payphone rates.

B. PREEMPTION

The IPTA contends that any adjustments to payphone rates are preempted by Section 276 of the 1996 Act. The IPTA is incorrect. As SBC Illinois explained in its Initial Brief, preemption only applies where there is a direct conflict between state and federal law. SBC Ill. Init. Br. at 35. The FCC has provided the states with a range of options in establishing payphone rates. As SBC Illinois has demonstrated, other methodologies could be used that would produce rates that satisfy both the FCC and state law.

It is a little late in the game for the IPTA to suggest that TELRIC costs cannot be used.[14] The IPTA is correct that payphone providers are not carriers under the 1996 Act and, therefore, are not entitled to network elements and/or other wholesale services offered by incumbent carriers under Sections 251 and 252 of the Act. IPTA Init. Br. at 14. That has nothing to do with the rate methodologies prescribed by the FCC under Section 276. The FCC has explicitly stated that the same TELRIC costs used to establish UNE rates *can* be used to establish the direct costs for payphone services and that the same shared and common factor used to set UNE rates *can* be

[14] In fact, the IPTA itself proposed using TELRIC costs early on in Docket No. 98-0195.

used to set the overhead loadings for payphone rates.[15] If the resulting payphone rates turn out to very similar to UNE rates, then that is simply a function of the pricing methodologies prescribed by the FCC. It is not, somehow, a misapplication of Sections 251 and 252 of the 1996 Act to use TELRIC costs to develop payphone rates.

C. RATE OPTIONS IF PREEMPTION DOES NOT APPLY

The rate options proposed by SBC Illinois are lawful and consistent with the FCC's payphone orders. Contrary to the IPTA's arguments, there is no "dearth of evidence" in this proceeding that these alternatives should be considered. There is no dispute that the rates established in Docket No. 98-0195 do not come anywhere close to meeting an imputation test (with the one exception of the COPTS Coin Line rate in Access Area A). That is more than enough reason to revisit them.

Staff generally agrees with SBC Illinois that the payphone rates approved in Docket No. 98-0195 should be revisited. Staff Init. Br. at 52-64. Staff disagrees with SBC Illinois on one significant issue, however. Staff suggests that, instead of using TELRIC costs, LRSIC costs should be updated based on Docket No. 02-0864. Staff Init. Br. at 62-63. Unfortunately, this will not solve the rate problem. Because of restrictions in the Illinois Cost of Service Rule, certain key inputs used to develop TELRIC costs cannot be used to develop LRSIC costs.[16] As a

[15] In fact, therein lies the inconsistency in the FCC's decisions that SBC Illinois finds objectionable. It made little sense for the FCC to have denied payphone providers access to UNEs on the grounds that they should be treated as retail customers and then mandate rate methodologies that can produce rates equal to or even lower than UNEs. However, this is obviously not an issue for this Commission.

[16] The Commission's Cost of Service Rule dictates the inputs into retail LRSIC studies and they differ from the TELRIC inputs just approved in Docket No. 02-0864. For example, Section 791.70(d) in effect requires the assumption that network facilities are fully utilized in LRSIC studies. In Docket No. 02-0864, the Commission approved a TELRIC standard based on SBC Illinois' actual loop utilization, adjusted to reflect so-called *ex post* inefficiencies. This resulted in fill factors much lower than those used in retail studies, thereby producing higher costs. Depreciation rates in LRSIC studies have been based on previous Commission prescriptions. In Docket No. 02-0864, the Commission approved use of GAAP depreciation rates in TELRIC studies (i.e., the depreciation rates used for financial reporting purposes). Again, all other things being equal, GAAP depreciation rates produce higher costs than regulatory depreciation rates. It is not clear whether use of GAAP depreciation rates would

result, it is not likely that Staff's approach would result in any significant rate changes or rates that would pass an imputation test. Thus, it may not be a worthwhile expenditure of the parties' resources to reopen this rate issue, if the Commission concludes that a LRSIC standard must be used.

VII. CONCLUSION

In conclusion, and contrary to the views of Staff and the Joint CLECs, the issue of how to perform an imputation test in this case is not cut-and-dried and is not simply dictated by the terms of Section 13-505.1. The Commission has ample authority to conclude that UNEs should not be imputed to retail business rates at all. Alternatively, the Commission can adopt a reasonable definition of the competitive "service" to which UNE loop rates are imputed that recognizes that no carrier competes for business network access lines on a stand-alone basis. Under either approach, SBC Illinois' retail business rates are in full compliance with Section 13-505.1 of the Act and no further action is required.

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comply with the Cost of Service Rule. These two changes alone account for most of the increase in SBC Illinois' UNE loop rates. SBC Ill. Ex. 1.0 (Panfil Direct) at 20-21.

Respectfully submitted,

ILLINOIS BELL TELEPHONE COMPANY

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One of Its Attorneys

Louise A. Sunderland
Illinois Bell Telephone Company
225 West Randolph Street
Floor 25D
Chicago, IL 60606
312/727-6705

CERTIFICATE OF SERVICE

I, Louise A. Sunderland, an attorney, certify that a copy of the foregoing **REPLY BRIEF OF SBC ILLINOIS** was served on the parties on the attached service list by U.S. Mail and/or electronic transmission on December 9, 2004.

Louise A. Sunderland

SERVICE LIST FOR ICC DOCKET NO. 04-0461

Eve Moran
Administrative Law Judge
Illinois Commerce Commission
160 North LaSalle Street, Suite C-800
Chicago, IL 60601
emoran@icc.state.il.us

Sally Briar, David J. Chorzempa
AT&T Communications
222 West Adams Street
Suite 1500
Chicago, IL 60606
sbriar@att.com
dchorzempa@att.com

Francie Brown
AT&T Communications
215 South Washington Square
Suite 230
Lansing, MI 48933
francesbrown@att.com

Harry Gildea
Snavely King Majors O'Connor Lee
1220 L Street NW, Suite 410
Washington, DC 20005
hgildea@snavely-king.com

William A. Haas
McLeodUSA
6400 C Street SW, P.O. Box 3177
Cedar Rapids, IA 52406-3177
whaas@mcleodusa.com

Matthew L. Harvey
Illinois Commerce Commission
160 North LaSalle Street, Suite C-800
Chicago, IL 60601-3104
mharvey@icc.state.il.us

Michael Lannon
Illinois Commerce Commission
160 North LaSalle Street, Suite C-800
Chicago, IL 60601
mlannon@icc.state.il.us

Bruce Levin
Levin Telecommunications, Corp.
1954 First Street, Suite 111
Highland Park, IL 60035
blevin@levincom.com

Julie Lucas Soderman
Citizens Utility Board
208 South LaSalle, Suite 1760
Chicago, IL 60604
jlucas@cuboard.org

Owen E. MacBride
Schiff Hardin & Waite
233 South Wacker Drive, Suite 6600
Chicago, IL 60606
omacbride@schiffhardin.com

Eric Madiar
Illinois Commerce Commission
160 North LaSalle Street, Suite C-800
Chicago, IL 60601
emadiar@icc.state.il.us

M. Gavin McCarty
Globalcom, Inc.
333 West Wacker, Suite 1500
Chicago, IL 60606
gmccarty@global-com.com

Peter Nyce
Department of the Army
Ofc. of the Judge Advocate General
901 North Stuart Street
Arlington, VA 22203
peter.nyce@hqda.army.mil

Thomas Rowland, Stephen J. Moore, Kevin D. Rhoda
Rowland & Moore
200 West Superior, Suite 400
Chicago, IL 60610
tom@telecomreg.com
steve@telecomreg.com
r&m@telecomreg.com

Douglas Price
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701
dprice@icc.state.il.us

Darrell Townsley, Deborah Kuhn
MCI, Inc.
205 North Michigan Ave., Suite 1100
Chicago, IL 60601
darrell.townsley@wcom.com
deborah.kuhn@mci.com

Michael Ward
Michael Ward, P.C.
1608 Barclay Blvd.
Buffalo Grove, IL 60089
mwward@dnsys.com